IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.12.2007

Coram:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

C.R.P.(NPD)No.1861 of 2003

R.Sampath .. Petitioner

vs.

Tamil Nadu Civil Supplies Corporation
Ltd., rep. By Senior Manager,
Chennai Region, No.71, Conransmith Road,
Chennai - 86. .. Respondent

PRAYER:Civil Revision Petition filed under Article 227 of the constitution of India against the order in A.O.P.No.5 of 2000 dated 7.11.2003 passed in E.A.No.6272 of 2001 in E.P.No.2042 of 2001 by the learned X Assistant City Civil Judge, Chennai.

For Petitioner : Mr.T.S.Baskaran

For Respondent : Mr.R.Ponnusamy

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O R D E R

The Civil Revision Petitioner herein is the first respondent in Tr.O.P.No.394 of 2006 on the file of the High Court, Madras. Originally the Tr.O.P.No.394 of 2006 was numbered as Arb.O.P.No.41 of 2002 on the file of the Principal Judge, City Civil Court, Chennai and later, the same was transferred to the file of the High Court for trial as per order dated 21.01.2006 and made in O.S.A.No.102 of 2004 read with R.O.C.No.1542 of 2006 (O.S.) dated 26.04.2006. The Tr.O.P. No.394 of 2006 was filed by the first respondent in the Revision Petition viz., T.N. Civil Supplies Corporation Limited as the petitioner. The said petition was filed under Section 34 of the Arbitration and Conciliation Act 1996, to set aside the Award.

2.It appears that the Revision Petitioner has obtained decree for Rs.4,23,174/- together with interest at 12% per annum from 30.11.2000 on Rs.4,23,174/- refund of security deposited and Earnest Money Deposit of Rs.80,000/- and costs of Rs.8,000/- against the Respondent/Judgment Debtor on 20th June 2001.

3.As a Decree Holder/Award Holder, the revision petitioner filed E.P.No.2042 of 2001 before the learned X Assistant Judge, City Civil Court for attachment of movable property of the Respondent/Judgment Debtor/T.N. Civil Supplies Corporation and the same was ordered by the Court below on 19.11.2001.

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4.It is the case of the Revision Petitioner/Decree Holder that the Respondent/Corporation prevented the bailiff from attaching movables and therefore, the police aid was granted on 23rd November 2001 by the Court below.

5.The learned counsel for the Revision Petitioner contends that on 27th November 2001 when the agent of the Revision Petitioner accompanied the Court bailiff to attach the movable property of the Respondent/JD, the Respondent/Corporation gave a cheque for Rs.5,57,744.66/- to the Revision Petitioner/Decree Holder/Award Holder in favour of the Registrar, City Civil Court, Madras to the credit of the E.P.No.2042 of 2001.

6.The Revision Petitioner/Award Holder before the trial Court filed E.A.No.6272 of 2001 praying for payment out order of the amount of Rs.5,57,744.65/-, which was in Court deposit to the credit of the E.P.No.2042 of 2001 in Ar. Case No.5 of 2000. The said E.A.No.6272 of 2001 was allowed on 06.12.2001 by the Court below unilaterally. Before allowing the E.A.No.6272 of 2001, no notice was ordered to be issued by the Court. C.M.P.No.203 of 2002 was filed by the Respondent/Corporation before the learned X Assistant Judge, City Civil Court praying for a stay of further proceedings of Execution Petition in E.P.No.2042 of 2001 in the Arbitration Award dated 20.06.2001 in Ar. Case No. 5 of 2000 and on 01.11.2002, the records of the case were sent to the Principal Judge, City Civil Court as per the order of the Principal Judge dated 18.10.2002.

7.E.A.No.6087 of 2001 was filed by the Respondent/JD praying to set aside the order dated 19.11.2001 passed in the E.P.No.2042 of 2001 in Arb. Case No.5 of 2001 on the file of the learned X Assistant Judge, City Civil Court, Chennai.

8.It is significant to point out that in E.A.No.6272 of 2001, a cheque for Rs.5,57,744.55/- in favour of the Revision petitioner/Decree Holder was ordered to be issued on proper identification by the Court below.

9.The Respondent/JD in its counter to the E.A.No.6272 of 2001 in Arb.Case No.5 of 2000 has inter alia stated that there is no executable decree and accordingly, E.P.No.2042 of 2001 is not maintainable and is liable to be dismissed and further, E.A.No.6272 of 2001 payment out of Rs.5,57,744.65/- ordered on 06.12.2001 without issuing notice was set aside by the High Court in C.R.P.No.334 of 2002 order dated 18.09.2002 and therefore, the amount which was received by the petitioner in E.A.No.6272 of 2001 was liable to be re-deposited into Court and the Civil Revision Petitioner/Petitioner in E.P.No.2042 of 2001 has not retained the said sum and prayed for a direction to deposit the sum of Rs.5,57,744.65/- received in E.A.No.6272 of 2001 into Court, etc.,.

10.The learned X Assistant Judge has passed orders in E.A.No.6272 of 2001 on 07.11.2003 inter alia observed that the pendency of Arb.O.P.No.41 of 2002 was accepted by both sides and the order passed

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in Ar. C.No.5 of 2000 has not reached finality and therefore, the Revision Petitioner would not get the amount deposited and therefore, passed the order directing the Civil Revision Petitioner to re-deposit the amount of Rs.5,57,744.65/- received by him within one month from the date of the said order.

11.The Tr.O.P.No.394 of 2006 filed by the Respondent/JD/Petitioner was dismissed by the Honourable High Court on 05.03.2007.

12.It is not out of place to point out that in Tr.O.P.No.394 of 2006 order dated 05.03.2007 passed by the Honourable High Court in Paragraph No.17, it is observed as follows:-

> "In the case on hand, there is a clear finding by the arbitrator that the labourers are the workmen of the petitioner corporation and in such circumstances, as rightly held by 2nd respondent, the petitioner corporation could not expect the 1st respondent to meet out the increased demand of the labourers of more than double rate of approved rate fixed by the corporation."

13.It cannot be gain said that after passing of the orders in E.A.No.6272 of 2001 by the trial Court on 07.11.2003 directing the Revision Petitioner to re-deposit the amount of Rs.5,57,744.65/- so received, within one month from the date of the order and in view of the subsequent development of Tr.O.P.No.394 of 2006 (Arbitration O.P.No.41 of 2006 on the file of the Principal Judge, City Civil Court, Chennai) having been dismissed by the Honourable High Court on 05.03.2007 it is not necessary for the Civil Revision Petitioner to re-deposit the amount of Rs.5,57,744.65/- so received by him, since he is entitled for that amount legally because of the changed circumstance.

14.At this juncture, the learned counsel for the Respondent/JD submits that as against the said orders passed by the Honourable High Court in Tr.O.P.No.394 of 2006 dated 05.03.2007, the Respondent/Corporation has filed copy application to get the order copy and to prosecute further proceedings and that the copy of the order has not been furnished to the Corporation till date. It is pertinent to point out that when the Tr.O.P.No.394 of 2006 filed by the Respondent/Corporation was dismissed by the Honourable High Court on 05.03.2007, certainly the balance of convenience is in favour of the Revision Petitioner/First Respondent/Decree Holder. As and when further proceedings are taken by the Respondent/Corporation /JD as against the orders passed in Tr.O.P.No.394 of 2006 dated 05.03.2007 and if the Respondent Corporation succeeds in the further proceedings to be initiated by it, it is always open to the Respondent Corporation to seek for restitution in regard to the amount of Rs.5,57,744.65/- received by the Revision Petitioner in the trial Court in accordance with law in the considered opinion of this Court.

15.In fine, in the light of the detailed discussions mentioned supra, this Court comes to a conclusion that the Civil Revision Petition needs to be allowed and accordingly, the same is allowed to

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meet the ends of justice. The order passed by the learned X Assistant Judge, City Civil Court, Chennai in E.A.No.6272 of 2001 dated 07.11.2003 is set aside. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

vri

To

The X Assistant Judge,
City Civil Court,
Chennai.

+1cc to M/s. Chitra Sampath, Advocate Sr 71341
+1cc to Mr.R.Ponnusamy, Advocate Sr 71413

RS(CO)
km/6.12.

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